

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PETER MANBECK, et al.,

Plaintiffs,

- against -

EUGENE MICKA, et al.,

07 Civ. 2642 (CS) (GAY)

ORDER

Defendants.
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Before this Court are several motions regarding costs, fees, and sanctions. Specifically, defendants (1) Jay Fain and Jay Fain & Associates, LLC (“Fain Defendants”); (2) Paul Taft and Tracy Taft (the “Tafts”); and (3) Eugene Micka and Catherine Micka (the “Mickas”) move pursuant to Rule 11 of the Federal Rules of Civil Procedure (“FRCP”) against plaintiffs and their attorneys for costs, attorney’s fees, and sanctions. Defendants Andrew Weingarten and Kathy Weingarten (the “Weingartens”) also move for costs, attorney’s fees, and sanctions pursuant to Rule 11 of the FRCP and 28 U.S.C. § 1927. The Court has reviewed the submissions by said parties and makes the following determinations.

I. Fain Defendants

The Honorable Charles L. Brieant, U.S. District Judge, issued a decision in Manbeck et al. v. Town of Lewisboro et al., 05 Civ. 4576 (“Manbeck I”) dismissing all of plaintiffs’ claims. Said claims included plaintiffs’ assertions that the Fain Defendants violated plaintiffs rights (1) pursuant to the Civil Rights Act, 42 U.S.C. § 1981, *et seq.*;

(2) to equal protection; (3) to substantive and procedural due process; (4) to privileges and immunities; (5) to a trial before a jury; (6) against excessive fines and punishment; (7) against unreasonable searches; and (8) against invidious discrimination, in connection with said defendants' inspections and issuing of violations pursuant to the Town of Lewisboro's Wetland Laws. Plaintiffs appealed said decision to the Second Circuit Court of Appeals.

After reviewing the Amended Complaint in Manbeck I and the Complaint in the present lawsuit ("Manbeck II"), the Court finds that plaintiffs, through their attorneys, attempt to litigate the same case against said defendants for a second time. Plaintiffs assert the same claims stated above. Plaintiffs have no basis for relitigating these claims.

Thus, as to making their motion for summary judgment in connection with Manbeck II, the Fain Defendants assert correctly that plaintiffs asserted frivolous claims in violation of Rule 11(b)(2) of the FRCP. See Cavallary v. Lakewood Sky Diving Ctr., 623 F.Supp. 242, 245 (S.D.N.Y. 1985) (It was within the court's discretion to award "reasonable costs and attorneys' fees . . . pursuant to" Rule 11 of the FRCP where plaintiff brought a second action against the same defendant and "raised no new issues not already decided" in the previous lawsuit.). As such, the Fain Defendants' motion is GRANTED.

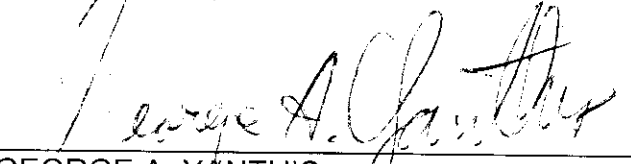
The Fain Defendants shall submit within thirty (30) days of this order documents to support the costs and fees they incurred in conjunction with making said motion for summary judgment. Plaintiffs have fifteen (15) days thereafter to respond.

II. The Mickas, Tafts, and Weingartens Defendants

As to defendants the Mickas, Tafts, and Weingartens, plaintiffs have not repeated claims against them stemming from Manbeck I. The record is clear that plaintiffs allege new claims against these defendants. In fact, plaintiffs' motion to amend the complaint to bring claims against said defendants was denied in Manbeck I. The Court also concludes that Rule 11 sanctions are not otherwise justified. Accordingly, said defendants' motions are DENIED.

Date: March 9, 2008
White Plains, New York

SO ORDERED:



GEORGE A. YANTHIS
UNITED STATES MAGISTRATE JUDGE